IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1131 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANILKUMAR BHARATBHAI PANCHAL - Appellant(s)
Versus
VIKRAM B SITOLA & 1 - Defendant(s)

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Appearance :
MR KG SHETH for Appellant(s) : 1,
MR DHAVAL K SHETH for Appellant(s) : 1,
NOTICE UNSERVED for Defendant(s) : 1,
MS AMEE YAJNIK for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/01/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

This appeal has been filed by the original claimant seeking enhancement of compensation granted by the Motor Accident Claims Tribunal (Aux.), Mehsana by judgment and award dated 11.2.2005 in Motor Accident Claim Petition No. 110 of 2000.

2. The appellant who was aged about 18 years on the date of accident had filed the above mentioned claim petition seeking compensation of Rs.7,00,000/- from the opponents herein. On 13.12.1999, when the appellant was going on his bi-cycle near Gita Industries, Mehsana, one luxury bus owned by opponent No.1 and insured by opponent No.2 – Insurance Company dashed against the appellant causing him serious injuries. The appellant was, therefore, taken for treatment at a general hospital in Visnagar from where he was transferred to the Civil Hospital at Ahmedabad for further treatment. He remained there as an indoor patient at the Civil Hospital, Ahmedabad from 13.12.1999 to 19.1.2000. The appellant had to undergo a major operation and his right leg below the knee joint had to be amputated. On account of this accident and resultant injuries, the appellant filed the above mentioned claim petition.

3. The Tribunal had no hesitation to come to the conclusion that the bus driver was responsible in causing the accident. The Tribunal considering the evidence on record was of the opinion that the accident was caused on account of sole negligence of the driver of the luxury bus.

4. While considering the question of quantum of compensation, the Tribunal took into account several aspects of the matter including the fact that the appellant had to remain as an indoor patient for 36 days in the Civil Hospital at Ahmedabad and that his right leg below the knee joint had to be amputated. The Tribunal also found that as per the medical evidence on record, the appellant had suffered disability to the extent of 60% of the lower limb. However, permanent total disability of the body as a whole was assessed at 30%. The Tribunal found that on the date of accident the appellant was working in Visnagar GIDC as a labourer. The Tribunal believed monthly income of the appellant to be Rs.1,500/- and applying 30% loss in earning capacity, came to the conclusion that the appellant would suffer loss of earning capacity at the rate of Rs.450/- per month i.e. Rs.5,400/- per annum. Considering the age of the appellant, multiplier of 15 was applied. The Tribunal, therefore, found that the appellant should receive a sum of Rs.81,000/- towards economic loss. The Tribunal granted a sum of Rs.20,000/- for medical expenses, Rs.4,000/- for attendant charges, Rs.5,000/- for special diet and Rs.5,000/- for transportation charges. The Tribunal also found that the appellant should receive appropriate compensation for pain, shock and suffering and loss of amenities of life. The Tribunal provided for compensation of Rs.25,000/- for pain, shock and suffering. The Tribunal separately awarded a further sum of Rs.20,000/- for loss of amenities of life. A sum of

Rs.9,000/- was awarded for actual loss of income.

Thus, the Tribunal awarded the following different amounts under different heads :-

Rs.	81,000/-	For future loss of income
Rs.	25,000/-	For mental pain, shock and suffering
Rs.	20,000/-	For medical expenses
Rs.	20,000/-	For loss of amenities of life and happiness
Rs.	4,000/-	For attendant charges
Rs.	5,000/-	For special diet
Rs.	5,000/-	For transportation, and
Rs.	9,000/-	For actual loss of income.
Rs.	1,69,000/-	Total compensation

It is this award which the appellant has challenged before this Court seeking enhancement of the compensation.

5. With respect to the nature of the accident and negligence of the luxury bus in causing such accident, since there is no dispute or debate, we do not avert to that aspect of the matter in this order.

6. Thus, averting directly to the question of appropriate compensation to be awarded to the appellant – original claimant, learned advocate Shri KG Sheth for the appellant submitted before us that the Tribunal erred in granting inadequate compensation. He submitted that the Tribunal did not take into account the future possible rise in the income of the appellant. He further submitted that the Tribunal also erred in holding that the earning capacity of the appellant would be diminished only by 30%. He submitted that considering the fact that the appellant was a labourer, amputation of his right leg below the knee joint would almost totally render him unable to do his normal duties. He, therefore, submitted that for the purpose of calculating the economic loss, the Tribunal ought to have applied 100% disability. In this regard, reliance was placed on the decision of the Apex Court in the case of Pratap Narain Singh vs. Shrinivas, reported in AIR 1976 SC 222 wherein considering that the injured workman was a carpenter and due to the injury suffered by him in the course of employment, he had suffered amputation of his left hand from the elbow, the Apex Court held that since a carpenter cannot work with one hand, his disablement should be considered as total and not partial.

The learned advocate for the appellant also submitted that the Tribunal ought to have awarded higher compensation under the head of pain, shock and suffering and loss of amenities of life. He pointed

out a decision of a Division Bench of this Court in the case of Mahendrakumar Manilal Patel vs. Ramjibhai Dalsibhai Chaudhary, reported in 2006 (1) GLR 637, wherein the Division Bench enhanced the compensation under the head of pain, shock and suffering to Rs.1,25,000/-. It was a case wherein also the claimant had suffered extensive injuries on his left leg with muscles exposed and crushed with no movement and sensation due to which it had to be amputated below the knee.

7. On the other hand, learned advocate Mr Amee Yagnik for opponent No.2 – Insurance Company while opposing the appeal submitted that the Tribunal has passed an appropriate award calling for no interference. She submitted that the Tribunal has accepted the medical evidence produced by the claimant regarding the extent of disability suffered by him and that, therefore, there is no further scope for enhancement of the compensation for future loss of earning capacity of the claimant. She submitted that the other amounts awarded also are just and proper.

8. Having heard the learned advocates appearing for the parties, we find that there is hardly any dispute about the fact that the appellant – claimant was working as a labourer in an industrial establishment situated in GIDC, Visnagar. The Tribunal though accepted the version of the appellant that he was earning monthly income of Rs.1,500/- from

his labour work, failed to take into account any future possible increase in his earnings. As a young man and able bodied person, with passage of time and diminishing value of rupee, the appellant was bound to have earned higher salary. The Tribunal, therefore, ought not to have computed the future loss of income on the basis of the current income of the appellant ignoring the future prospective rise in his income.

9. Considering that with passage of time the income of the appellant would have doubled and taking the average of the current income and future prospective rise in income, the average prospective income of the appellant can be thus assessed as Rs.2,250/- per month.

10. With respect to the nature of disability suffered by the appellant on account of the injuries, it may be noted that due to the injuries, the appellant had to suffer amputation of his right leg below the knee joint. As noted earlier, the appellant was a labourer. His ability to earn his future living, therefore, could not have been assessed by applying the percentage of disability opined by the doctor. It may also be noted that the medical evidence on record suggested that the appellant had suffered 60% disability of the lower limb, but by consent of the advocates appearing for the parties, such disability was assessed by the Tribunal at 30% of the body as a whole.

Here, we find that though on behalf of the appellant – claimant, his advocate appeared to have consented before the Tribunal that assessment of compensation of future loss of income can be made on the basis of 30% disability, we find that in the facts of this case, the appellant cannot be made to suffer on account of such concession made by his lawyer. In that view of the matter, we have heard the learned advocates appearing for the parties at some length regarding the appropriate disablement of the appellant which should be accepted.

11. We may notice that under the Workmen's Compensation Act, under Scheduled I to the Act, it is provided that for amputation below knee with stump exceeding, the appropriate disability should be taken at 50% of the loss of earning capacity. We may also notice that under Section 2(l) of the Workmen's Compensation Act, total disablement has been described as such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement.

We may once again reiterate that the appellant was working as a labourer and had on account of the accident lost his right leg below knee joint. The question that is required to be considered, therefore, is what would be the appropriate percentage of disability in his earning capacity that he would suffer on account of such

amputation.

In the case of Pratap Narain Singh vs. Shrinivas (Supra), as noted earlier, the Apex Court found that when the claimant was a carpenter and his one hand was amputated, his disability was taken as 100%. In that view of the matter, we are not inclined to accept only 30% disablement in earning capacity of the appellant as adopted by the Claims Tribunal. However, at the same time, we are unable to countenance the submission made by the learned advocate for the appellant that such disability should be assessed as 100% of the body as a whole since there is no evidence on record that the appellant was rendered completely incapacitated to discharge similar kind of work for all times to come.

12. Considering all these aspects of the matter and particularly taking into the account the nature of work in which the appellant was involved and the amputation of his right leg below knee joint, we find that the loss in the earning capacity should be taken at 75% and the compensation should be re-worked accordingly.

13. With respect to the choice of multiplier also, we find that the Tribunal applied multiplier of 15 for a boy of 18 years of age. Appropriately in the facts of this case such multiplier needs to be increased to 18.

14. Accordingly, future loss of income would be worked out as follows :-

Prospective income at Rs.2,250/- per month or Rs.27,000/- per annum. Applying 75% disability thereof, the claimant would be at loss of Rs.20,250/- per annum. Applying the multiplier of 18, the claimant should receive a sum of Rs.3,64,500/- (i.e. Rs.20,250 x 18) under the head of future loss of income.

15. With respect to the pain, shock and suffering and loss of amenities of life, as noted earlier, the Tribunal has awarded a total sum of Rs.45,000/-. The Division Bench of this Court in the case of Mahendrakumar Manilal Patel vs. Ramjibhai Dalsibhai Chaudhary (Supra), under somewhat similar circumstances awarded a sum of Rs.1,25,000/- under the said heading. It was also a case wherein the claimant had to undergo amputation of leg and had suffered other injuries as well. In the present case, we find that the appellant was a young boy aged 18 years. Due to amputation of his leg, he would have to undergo considerable pain, shock and suffering. The future loss of enjoyment of life also would be substantially diminished. Considering all these aspects of the matter, we also are inclined to allow compensation of Rs.1,25,000/- to the appellant – claimant under the combined head of pain, shock and suffering and loss of amenities of life.

17. The remaining directions for payment of other miscellaneous amounts remain unchanged. In the result, the appellant shall receive the following modified amounts.

Rs.3,64,500/-	For future loss of income
Rs.1,25,000/-	For pain, shock and suffering and loss of amenities to life
Rs. 20,000/-	For medical expenses
Rs. 4,000/-	For attendant charges
Rs. 5,000/-	For special diet
Rs. 5,000/-	For transportation, and
Rs. 9,000/-	For actual loss of income.
Rs.5,32,500/-	Total compensation

The appellant shall receive a total sum of Rs.5,32,500/-.

18. In the result, the appeal is allowed partially. The appellant – claimant shall receive a total sum of Rs.5,32,500/- instead of Rs.1,69,000/- awarded by the Claims Tribunal. In other words, the appellant shall receive an additional sum of Rs.3,63,500/- with proportionate cost and interest at the rate of 9% per annum from the date of the claim petition till payment. Such additional compensation

shall be deposited by the opponents herein before the Claims Tribunal within a period of eight weeks from the date of receipt of this judgment.

Upon such deposit being made by the opponents, the Claims Tribunal shall invest 90% thereof with interest thereon in any nationalized bank near the residence of the claimant for a period of five years, with usual conditions about prohibition against premature encashment of/encumbrance over the deposits, with permission to the claimant to withdraw interest periodically accruing on the fixed deposits and with a direction to the bank not to permit the account to be operated by any power of attorney holder other than a close relative of the claimant. The remaining 10% amount of the compensation with interest and entire costs to be disbursed in favour of the appellant claimant by payee cheque after proper verification and after informing him about the amounts being invested/disbursed and the terms and conditions of the investment.

19. With these directions, the appeal is disposed of.

Direct Service is permitted.

[M.S. SHAH, J.]

[AKIL KURESHI, J.]

sundar/-